

# **EXHIBIT E**

THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

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IN RE:

NORTH WESTERN CORPORATION,

Chapter 11  
Case No 03-12872-JLP

Debtor.

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DEPOSITION OF KENDALL KLIEWER

New York, New York

Wednesday, January 26, 2005

Reported by:  
Adrienne M. Mignano  
JOB NO. 169725

**ORIGINAL**

Esquire Deposition Services  
1-800-944-9454

1  
2  
3  
4 January 26, 2005  
5 10:25 a.m.  
6

7 Deposition of KENDALL KLIEWER,  
8 held at the offices of Nixon Peabody,  
9 437 Madison Avenue, New York, New York,  
10 pursuant to Notice, before Adrienne M.  
11 Mignano, a Notary Public of the State  
12 of New York.  
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2 A P P E A R A N C E S:  
3  
4

5 NIXON PEABODY, LLP  
6 Attorneys for Law Debenture  
7 Trust Company of New York

8 100 Summer Street  
9 Boston, MA 02110

10 BY: JOHN V. SNELLINGS, ESQ.  
11  
12

13 PAUL, HASTINGS, JANOFSKY & WALKER, LLP  
14 Attorneys for North Western

15 600 Peachtree Street, NE - Suite 2400  
16 Atlanta, GA 30308-2222

17 BY: KAROL K. DENNISTON, ESQ.  
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23  
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1  
2 IT IS HEREBY STIPULATED AND AGREED,  
3 by and between the attorneys for the  
4 respective parties herein, that filing  
5 and sealing be and the same are hereby  
6 waived.

7 IT IS FURTHER STIPULATED AND AGREED  
8 that all objections, except as to the  
9 form of the question, shall be reserved  
10 to the time of the trial.

11 IT IS FURTHER STIPULATED AND AGREED  
12 that the within deposition may be sworn  
13 to and signed before any officer  
14 authorized to administer an oath, with  
15 the same force and effect as if signed  
16 and sworn to before the Court.  
17  
18  
19  
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21  
22  
23  
24  
25

1 K. Kliewer

2 K E N D A L L K L I E W E R, called as a  
3 witness, having been duly sworn by a  
4 Notary Public, was examined and  
5 testified as follows:

6 EXAMINATION BY

7 MR. SNELLINGS:

8 Q. Would you state your full name for  
9 the record, please.

10 A. Kendall Kliewer.

11 Q. And Mr. Kliewer, could you give us  
12 your home address?

13 A. My home address is 4510 South River  
14 Oaks Drive, Sioux Falls, South Dakota 57105.

15 Q. Thank you for traveling.

16 What is your position at the  
17 debtor, North Western?

18 A. I'm the controller.

19 Q. How long have you been the  
20 controller?

21 A. I have been the controller since  
22 July of 2004. I have been the chief  
23 accounting officer since November of 2002.

24 Q. And what are your responsibilities  
25 in that role?

1 K. Kliever

2 A. I oversee the accounting function  
3 at North Western to include filing 10-Ks,  
4 10-Qs and all external financial statements,  
5 the financial statements that are filed with  
6 bankruptcy court, the monthly operating  
7 reports, and then I oversee all of the  
8 internal accounting reporting functions.

9 Q. And those are responsibilities you  
10 have had throughout your employment there?

11 A. Yes, I have.

12 Q. Where did you work before you  
13 started with North Western?

14 A. KPMG.

15 Q. With regard to your  
16 responsibilities as controller, do you have  
17 any oversight with respect to the bankruptcy  
18 with regard to payment of professional fees  
19 and fee applications that have been filed in  
20 the case?

21 A. Yes, I have. I have reviewed and  
22 approved -- been involved in the approval of  
23 all of the fee applications and other  
24 professionals that we have paid throughout  
25 the bankruptcy.

1 K. Kliever

2 Q. Has that been those that have been  
3 retained solely by the debtor of all  
4 professionals?

5 A. All professionals.

6 Q. Including the creditors committee  
7 council?

8 A. Correct.

9 Q. Creditors committee advisors?

10 A. Yes.

11 Q. Financial advisors?

12 A. Yes.

13 Q. Are you familiar with the legal and  
14 consulting and professional fees and expenses  
15 paid to HSBC Bank by the debtor in connection  
16 with this Chapter 11?

17 A. Yes, I am.

18 Q. Did you review their fee  
19 application?

20 A. They didn't have a fee application.  
21 They provided invoices prior to emerging on  
22 November 1st.

23 Q. I'm going to show you a notice of  
24 deposition that was filed in this matter with  
25 regard to this deposition.



1 K. Kliwer

2 Have you seen that document before?

3 A. Yes, I have.

4 MR. SNELLINGS: And could we mark  
5 that as Exhibit 1.

6 (Kliwer Exhibit 1, Deposition  
7 Notice, marked for identification, as  
8 of this date.)

9 Q. Mr. Kliwer, have you ever been  
10 deposed before?

11 A. Yes, I have.

12 Q. In connection with the North  
13 Western case?

14 A. Not in connection with North  
15 Western's case. I have been deposed in  
16 connection with a subsidiary of North Western  
17 and I have also been deposed by the SEC in  
18 connection with securities -- with their  
19 investigation of the company.

20 Q. Now, this is a notice of deposition  
21 that we filed that we have marked as Exhibit  
22 1. It asks for North Western to designate an  
23 individual who has knowledge with respect to  
24 those items listed on schedule A.

25 Have you reviewed schedule A?

1 K. Kliwer

2 A. Yes, I have.

3 Q. And are you the person that North  
4 Western has designated to discuss those  
5 various topics?

6 A. Yes, I am.

7 Q. Now, with respect to -- how many  
8 topics are there? I don't have it in front  
9 of me.

10 A. Thirteen.

11 Q. In your review of those, do you  
12 feel that you have sufficient knowledge and  
13 information with regard to the debtor's  
14 operations and those particular items to  
15 testify to them today?

16 A. Let me take a quick look at them  
17 again.

18 Q. Take your time.

19 A. Yes, I do.

20 Q. Is there anyone else at North  
21 Western, to your knowledge, that also would  
22 have information regarding these various  
23 topics?

24 A. Well, I'm sure there are several  
25 with knowledge on various components of these

1 K. Kliever

2 topics. I'm not sure that anyone would have  
3 more knowledge related to all 13 of them than  
4 I do.

5 Q. In preparation for being here  
6 today, did you speak with anyone or consult  
7 with anyone at the company about these  
8 various topics?

9 A. I briefly spoke with Brian Bird,  
10 our CFO, and very briefly with Tom Knapp, our  
11 general counsel.

12 We didn't -- the conversation did  
13 not go into detail on this schedule. It was  
14 essentially overall what the deposition was  
15 related to.

16 Q. During the bankruptcy, did Mr. Bird  
17 participate in making decisions with regard  
18 to the payment of professional fees in the  
19 case?

20 A. Yes, he did.

21 Q. Who else participated in those  
22 decisions?

23 A. Gary Drook, our CEO, Tom Knapp, our  
24 general counsel. At the time Tom Knapp  
25 was -- he has been the assistant general

1 K. Kliwer  
2 counsel throughout the bankruptcy up until  
3 recently, he was appointed general counsel.

4 Q. Now, were these discussions that  
5 you regularly had at meetings or was it just  
6 casual conversation about fees as the  
7 applications were filed?

8 A. Essentially as the applications  
9 were filed, their invoices were submitted to  
10 the company for payment. I would typically  
11 take the initial review and send my approval  
12 or my recommendation for approval then to  
13 Brian Bird or Tom Knapp.

14 If the fees were above 250,000 but  
15 below a million, either one of them could  
16 approve it. And so that was the reason for  
17 sending the applications on to them.

18 If they were above a million, then  
19 Gary Drook had to approve payment.

20 Q. Do you recall an instance in which  
21 fees were not approved in that process that  
22 you have just outlined for us?

23 A. Not -- no, I don't recall any fees  
24 not being approved.

25 Let me step back a minute.

1 K. Kliewer

2 We did have professionals that  
3 were -- that we had various negotiations with  
4 and ended up reducing -- they ended up  
5 reducing their professional fees. White &  
6 Case and Ernst & Young were the two that come  
7 to mind immediately that ended up reducing  
8 their professional fees as a result of  
9 ongoing negotiations throughout the  
10 bankruptcy.

11 Q. White & Case, were they engaged by  
12 the debtor directly?

13 A. No, they were not. They were  
14 engaged by, I believe, Mellon on behalf of  
15 their ownership in the Kolstrip,  
16 K-O-L-S-T-R-I-P, leasehold interest.

17 Q. And Ernst & Young worked for whom  
18 in the case?

19 A. Ernst & Young was hired by White &  
20 Case to assist them.

21 Q. Now, are you familiar with the  
22 legal advisory consulting and other  
23 professional fees that were paid to  
24 Wilmington Trust Company?

25 A. Yes, I am.

1 K. Kliever

2 Q. And were you involved in the  
3 negotiations or decisions to make that  
4 payment?

5 A. I was not involved in the  
6 negotiations. I received drafts of the  
7 settlement negotiations as they were -- as it  
8 was being contemplated and reviewed, but in  
9 terms of making the decision on the  
10 settlement, no.

11 Once I noted what was in the plan  
12 of reorganization and what the settlement  
13 terms were when we received the information  
14 from Wilmington Trust, we paid the fees.

15 Q. We'll go into that in a little more  
16 detail later, but now, there are another --

17 MR. SNELLINGS: Strike that.

18 Q. There are several other indenture  
19 trustees other than Wilmington and HSBC and  
20 my client, Law Debenture. There are JP  
21 Morgan Trust, I think Bank of New York was  
22 one indenture. Wells Fargo is an indenture  
23 for the control bonds.

24 Have they all been paid their fees,  
25 to your knowledge?

1 K. Kliwer

2 A. Yes, I believe they have.

3 Q. Did you participate in any analysis  
4 with regard to those fees?

5 A. Yes, I reviewed invoices as they  
6 came through.

7 Q. And are you familiar with fees paid  
8 to Harbert?

9 A. Yes, I am.

10 Q. And did you authorize the payment  
11 of those fees?

12 A. Yes, I did.

13 Q. I'd like to first sort of focus on  
14 HSBC.

15 Do you have an understanding of  
16 what their role was or position in the North  
17 Western bankruptcy?

18 A. Yes, HSBC was the indenture trustee  
19 for many of our unsecured notes, so they were  
20 part of the indenture trustee for class 7  
21 claimants.

22 Q. So this is the class 7 indenture  
23 trustee.

24 Did they sit on the committee?

25 A. I believe they did.

1 K. Kliever

2 Q. And do you have any recollection of  
3 whether or not they commenced any adversary  
4 proceedings in the bankruptcy?

5 A. I do not recall any adversary  
6 proceedings.

7 Q. How about contested matters, do you  
8 know what that term means?

9 A. I know what the term means. I  
10 don't recall HSBC bringing any contested  
11 matters.

12 Q. And if the claim is that it  
13 represented as the senior noteholders class  
14 7, that was an unsecured plan, correct?

15 A. Correct.

16 Q. With regard to -- do you have any  
17 recollection of how much in fees were paid to  
18 HSBC by the debtor?

19 A. I believe it was roughly 700 to  
20 \$750,000.

21 Q. I'm going to try to be disciplined.  
22 When I say "you", I'm talking about you  
23 personally. I'll try to indicate that.  
24 Sometimes I'll say "you" meaning the company.  
25 I'll try to indicate that too. Sometimes



1 K. Kliever

2 these 30(b)(6) depositions can get very  
3 confusing that way.

4 With regard to your personal  
5 experience, did you have any personal  
6 discussions with HSBC about its fees and  
7 expenses?

8 A. No, I did not.

9 Q. Do you know if anyone at the  
10 company, at North Western, had any  
11 discussions with HSBC regarding their fees  
12 and expenses?

13 A. Not to my knowledge.

14 Q. Do you know if anyone at Paul,  
15 Hastings, your counsel, had any discussions  
16 with HSBC regarding their fees and expenses?

17 A. Not to my knowledge.

18 Q. How was it determined that the fees  
19 and expenses of HSBC was between, as you  
20 said, \$700,000 to \$750,000 and approved by  
21 the company?

22 A. How were the fees determined to be  
23 \$750,000?

24 Q. Yes.

25 A. HSBC provided invoices mainly from

1 K. Kliwer

2 their bankruptcy counsel, very detailed  
3 invoices, that added up to the \$750,000,  
4 roughly \$750,000.

5 And on review of those invoices, I  
6 discussed -- I had a brief conversation with  
7 Brian Bird, our CFO. I also had a  
8 conversation with counsel from Paul, Hastings  
9 to say we checked back to see if we had paid  
10 any fees along the way or had received any  
11 invoices along the way. And we talked about  
12 what the fees related to and the amount of  
13 the fees and determined that they were  
14 reasonable in conversations amongst counsel  
15 and internally.

16 Q. And with regard to that which was  
17 paid with regard to HSBC's role in the case,  
18 those fees included fees that were particular  
19 to HSBC, the institution itself as indenture  
20 trustee as well as their counsel?

21 A. Yes, I believe the annual  
22 administrative fees were also included in  
23 that number.

24 Q. And with regard to their counsel,  
25 that was Pryor, Cashman?

1 K. Kliewer

2 A. Correct.

3 Q. Did they have any other counsel; do  
4 you recall?

5 A. I don't recall.

6 Q. And were these fees, if you recall,  
7 paid on or about the effective date?

8 A. They were.

9 Q. Which was November 1, 2004?

10 A. Correct.

11 Q. Let me show you a document that was  
12 produced in connection with a document  
13 request that we made of the company in  
14 connection with this bankruptcy.

15 A. Okay.

16 Q. Have you seen this document before?

17 A. Yes, I have.

18 MR. SNELLINGS: Can we have this  
19 marked as Exhibit 2.

20 (Kliewer Exhibit 2, Invoice from  
21 HSBC, marked for identification, as of  
22 this date.)

23 Q. Mr. Kliewer, you indicated that you  
24 had seen this document before.

25 Can you in your own words tell us

1 K. Kliwer

2 what this is?

3 A. This is one of a couple of the  
4 invoices that were provided by HSBC prior to  
5 the effective date for payment that are  
6 included in the total of approximately  
7 \$750,000.

8 Q. And with regard to this invoice  
9 dated October 4, 2004, this is actually from  
10 HSBC itself, correct?

11 A. Correct.

12 Q. And did you in connection with  
13 approving their fees review this particular  
14 document?

15 A. Yes, I did.

16 Q. Anybody else at North Western  
17 review this document, to your knowledge?

18 A. The -- what I had provided was a  
19 summary of all of the professional fees to be  
20 paid upon the effective date to both the CFO  
21 and the CEO, and as all of those fees  
22 aggregated more than a million dollars, the  
23 CEO provided approval.

24 I don't know that he specifically  
25 reviewed each invoice.

1 K. Kliwer

2 Q. With regard to the amounts that  
3 were paid, the total paid in excess of  
4 \$700,000 to HSBC, is it your testimony that  
5 that's to the best of your recollection the  
6 total of this invoice, which is \$46,209.30,  
7 which is on page 7 here, was included in that  
8 \$700,000?

9 A. Yes, I believe it was.

10 Q. Did you have any -- and, again,  
11 personally, did you have any conversations  
12 with anyone from HSBC or their counsel  
13 regarding this particular invoice?

14 A. No, I did not.

15 Q. Do you know if your counsel or  
16 anyone from Paul, Hastings discussed this  
17 invoice with HSBC or their counsel?

18 A. No, I don't.

19 Q. Was this submitted on October 4,  
20 2004 by HSBC in anticipation of the effective  
21 date?

22 A. Yes, I believe it was. Actually,  
23 we -- the company did not receive it on  
24 October 4th, but it was after they sent it  
25 out. It was probably closer to October 15th

1 K. Kliever  
2 before we received it, but, yes, I believe it  
3 was.

4 Q. Other than this invoice with regard  
5 to fees associated with HSBC, did you receive  
6 any other documents in support of this  
7 particular invoice?

8 A. I don't recall. I don't believe we  
9 received anything as additional support for  
10 this invoice, but I don't recall.

11 Q. Turning to this particular  
12 document, I just have a few questions.

13 On the face of it, there are  
14 initials after the date of each entry; it's  
15 usually RC or RP.

16 Do you know -- those are usually an  
17 indication of the person performing the task.  
18 Do you know who those were?

19 A. No, I don't.

20 Q. Did you ask HSBC as to who those  
21 individuals might have been?

22 A. No, I did not.

23 Q. And with regard to the column that  
24 says hours/rate, is it your understanding the  
25 second part of that entry, where it says \$382

1 K. Kliewer

2 per hour, that that's the hourly rate of the  
3 individual performing the task?

4 A. That's my understanding, yes.

5 Q. Did you ever ask HSBC or their  
6 counsel with regard to the reasonableness of  
7 that hourly rate?

8 A. No, I did not. We reviewed that as  
9 compared to other professional rates and it  
10 did not appear out of line, so we didn't  
11 request any information from HSBC.

12 Q. On the first page here, there are  
13 seven entries all saying the same thing,  
14 review of miscellaneous documents/court  
15 papers, et cetera.

16 Do you have an understanding of  
17 what they were doing during that task?

18 A. Well, this was close to the dates  
19 of our initial bankruptcy, and a lot of  
20 the -- it would have been after the first day  
21 hearings, but a lot of the initial filings  
22 and motions with the court. So do I recall  
23 specifically? No. But, obviously, there  
24 were a lot of documents filed with the court  
25 at that time and would have been reviewed by

1 K. Kliwer

2 not only HSBC attorneys but yourself and  
3 several others as well.

4 Q. I agree.

5 And did you ever ask HSBC for a  
6 further detail as to what documents they were  
7 looking at or court papers they were  
8 examining?

9 A. No, we did not.

10 Q. On the third page, there is a time  
11 entry of the third one down, January 28,  
12 2004, in part saying preparation and mailing  
13 of notice to holders.

14 Do you have any understanding of  
15 what that task might have been?

16 A. I don't recall offhand what those  
17 notices would have related to.

18 Q. But is it normal sort of course of  
19 task of an indenture trustee to give notice  
20 to their holders during pendency of a  
21 bankruptcy?

22 A. It is my understanding that it  
23 would be, yes.

24 Q. But did you or anyone else ask for  
25 any detail with regard to that particular



1 K. Kliwer

2 task?

3 A. Not specifically, no.

4 Q. It appears, if you follow the rate  
5 structure, that there is a point in time  
6 where the rates for these individuals that  
7 were performing these tasks went from \$382 to  
8 \$425.

9 Did you investigate or ask any  
10 questions as to why there was an increase in  
11 the hourly rate for these individuals?

12 A. My assumption is that that's -- it  
13 happened right at the first of the year and  
14 having worked for professional services  
15 firms, that seemed customary that rates would  
16 increase at the beginning of a firm's fiscal  
17 year calendar or otherwise.

18 Q. Since October 4th, has HSBC amended  
19 this invoice to your knowledge?

20 A. No, they have not.

21 Q. Turning to the last page of this  
22 particular exhibit, there is a one-page  
23 document that's different than the invoice,  
24 and it's an invoice dated December 19, 2003,  
25 directed to North Western Corporation, to the

1 K. Kliever  
2 attention of Gary Drook.

3 Who is Mr. Drook?

4 A. Gary Drook is the president and CEO  
5 of the company.

6 Q. Still is?

7 A. Yes.

8 Q. And this invoice, have you seen  
9 this document before?

10 A. Yes, I have.

11 Q. And could you describe for me what  
12 your understanding is, what it is indicating  
13 here?

14 A. It is the annual trustee fee for  
15 three different issuances as indicated on the  
16 invoice itself. Do you want me to state  
17 those issuances?

18 Q. I think we can see them.

19 A. Okay.

20 Q. Do you have an understanding of  
21 what this annual fee as trustee registrar  
22 paying agent -- what type of fee that is?

23 A. Basically my understanding is it is  
24 an administration fee we have been charged  
25 not only by HSBC but other indenture trustees

1 K. Kliever  
2 as well. Annual fees in conjunction with the  
3 issuances that they act as indenture trustee  
4 on.

5 Q. Was this part of the \$750,000 that  
6 was paid to HSBC?

7 A. I believe it was, yes.

8 Q. And did you do any investigation  
9 with regard to whether or not the fee here  
10 was reasonable?

11 A. When we received this invoice, I  
12 looked at the previous year to ensure that  
13 this wasn't something new that was being  
14 billed by HSBC, and upon review of the prior  
15 year annual fees, this was consistent with  
16 those and we went ahead and paid it.

17 Q. Do you know if HSBC filed a fee  
18 request or fee application in connection  
19 with -- with the bankruptcy court in  
20 connection with getting their fees paid?

21 A. I do not believe they filed any fee  
22 applications.

23 Q. And so there has been no court  
24 review of these fees?

25 A. That's correct.

1 K. Kliwer

2 Q. Do you know if the fee auditor  
3 received anything from HSBC to be reviewed?

4 A. I don't know.

5 Q. Have you ever seen a report from  
6 the fee auditor regarding HSBC fees?

7 A. No, I haven't.

8 Q. Do you know the law firm of LeBouf  
9 Lamb, Greene and MacRae?

10 A. That one does not ring a bell.

11 Q. Do you recall them participating in  
12 the bankruptcy by representing any party?

13 A. No, I don't recall that name.

14 Q. Would it help you if I told you  
15 that they were one of the counsel that  
16 represented HSBC in the bankruptcy?

17 A. Okay. I'll take your word for it.

18 Q. Let me show you their invoice. See  
19 if you have seen this before.

20 A. I don't recall this one  
21 specifically, but I assume it was part of the  
22 invoices that were provided in support of the  
23 seven some odd thousand that was paid to  
24 HSBC.

25 MR. SNELLINGS: Could we have

1 K. Kliewer

2 this marked as Exhibit 3.

3 (Kliewer Exhibit 3, LeBouf

4 Invoice, marked for identification, as  
5 of this date.)

6 Q. So would you now confirm that  
7 LeBouf worked for HSBC in the North Western  
8 bankruptcy?

9 A. Yes, I would.

10 Q. And do you have any personal  
11 knowledge or understanding of what I will  
12 just call the PUHCA controversy in the North  
13 Western controversy?

14 A. I have a very limited understanding  
15 of the PUHCA issues. I was aware of those  
16 but could not speak intelligently to those.

17 Q. What was your understanding?

18 A. Essentially that being a public  
19 utility, there were various issues we had to  
20 deal with under PUHCA and that both our  
21 counsel, Paul, Hastings, and others had  
22 raised it on various calls that I was on, but  
23 that's about the extent of my understanding.

24 Q. Do you have any understanding or  
25 knowledge that Wilmington Trust and Harbert

1 K. Kliwer  
2 filed an objection to HSBC's claim based on  
3 an alleged PUHCA violation?

4 A. I do not know recall that.

5 Q. Do you have any understanding of  
6 how the PUHCA claimed filed by Wilmington  
7 would affect the claim of HSBC and the  
8 bankruptcy?

9 A. No, I don't.

10 Q. Do you have any actual recollection  
11 of reviewing this particular invoice in  
12 connection with the payment of HSBC's fees?

13 A. Like I said, I don't recall it  
14 specifically, but I am assuming if I went  
15 back to my files, it would be part of those  
16 invoices that supported the \$750,000.

17 Q. Today you don't have any  
18 recollection of asking any questions  
19 regarding this particular invoice from  
20 LeBouf?

21 A. No, I'm sure I didn't ask any  
22 specific questions about this.

23 Q. Do you know in your files or in the  
24 files of North Western are there any other  
25 documents which evidence or refer to the work

1 K. Kliewer

2 LeBouf performed referring to the work of  
3 HSBC?

4 A. I don't recall any other documents  
5 referring to LeBouf.

6 Q. Do you recall whether or not LeBouf  
7 filed a fee application in the case?

8 A. No, they did not.

9 Q. So they were being paid pursuant to  
10 the plan's treatment of indenture trustees?

11 A. That's correct.

12 Q. In your review of the fees  
13 associated with HSBC, and in particular since  
14 we have LeBouf's invoice in front of us, did  
15 you make any determination with regard to the  
16 reasonableness of their fees?

17 A. Of LeBouf's specifically?

18 Q. Yes.

19 A. No, upon review of the invoice and  
20 discussion with counsel, we received all of  
21 HSBC invoices at once from, obviously, LeBouf  
22 and Pryor, Cashman and the other HSBC  
23 invoices. Upon review of those and the  
24 discussion with counsel and understanding --  
25 an overall understanding of the issues that

1 K. Kliwer

2 were covered in the bankruptcy case and  
3 adversary proceedings that had arisen  
4 throughout the case, and HSBC's involvement  
5 in and support of the plan, we looked at  
6 their fees kind of in total, the \$750,000,  
7 and determined that based on the time period  
8 that was covered and all the issues that  
9 overall they appeared reasonable. We didn't  
10 do a specific review of all of the invoices.

11 Q. And was your main criteria  
12 reasonableness when you were looking at these  
13 fees?

14 A. It was reasonableness and  
15 discussion with our counsel in terms of  
16 obtaining understanding of what -- there were  
17 several professionals that we were paying  
18 along the way, obviously, so if I didn't  
19 understand who the professional related to, I  
20 would call up personnel from Paul, Hastings  
21 and ask what does this relate to, do these  
22 appear reasonable, and that's exactly what we  
23 did here with HSBC. Do they appear  
24 reasonable? Considering the nature of the  
25 case and what went on, yes, they do.



1 K. Kliewer

2 Q. And do you have an understanding of  
3 what the debtor's obligation is and was under  
4 the plan with regard to indenture trustees'  
5 fees?

6 A. My understanding under the plan was  
7 that we were to reimburse indenture trustee  
8 fees for costs that were reasonably incurred  
9 and that benefitted the estate.

10 Q. And with regard to HSBC, what  
11 benefits to the estate was received?

12 A. Their benefit to the estate was the  
13 support of the plan and the assistance with  
14 or assisting North Western and the rest of  
15 the creditors committee in getting the plan  
16 approved in a timely manner.

17 Q. But with regard to, let's say,  
18 LeBouf's fees that are here in this invoice,  
19 did you use a similar standard to that, to  
20 analyze these particular entries or were you  
21 just looking at the request as a whole?

22 A. Like I said, personally I didn't  
23 have enough involvement in the PUHCA issues  
24 to speak intelligently to that, but my  
25 understanding is that yes, based on the

1 K. Kliwer

2 issues that are -- that were arising and  
3 HSBC's involvement, that they were  
4 reasonable.

5 Q. Do you recall how much time did you  
6 take in reviewing all of the HSBC related  
7 invoices?

8 A. Well, we received -- the company  
9 received all of those invoices in one day  
10 shortly before the effective date, so it was  
11 a matter of probably three hours that day  
12 receiving the invoices, reviewing those and  
13 then over the course of that day and the next  
14 couple days prior to the effective date,  
15 calling counsel at Paul, Hastings and talking  
16 with the CFO, CEO and others. So all in all,  
17 probably internal time was probably four to  
18 six hours.

19 Q. If you turn to the second page of  
20 the LeBouf invoice, I have a few more  
21 questions. The third entry down, do you know  
22 who LEM is?

23 A. No, I don't.

24 Q. Okay. There is an entry on  
25 7-23-04, review motion by Wilmington Trust

1 K. Kliever

2 avoid bonds of HSBC. One hour. And later  
3 on, there is an entry that begins draft  
4 response to objections.

5 Would you agree with me that  
6 Wilmington Trust in seeking to avoid the  
7 bonds of HSBC and the filing of objections  
8 was for the benefit of HSBC?

9 A. Can you repeat the question?

10 Q. With regard to this, the work that  
11 I have just identified, those entries  
12 reviewing the motion by Wilmington Trust  
13 trying to avoid the bonds of HSBC and then  
14 the later entry drafting a response, that  
15 with regard to LeBouf as counsel to HSBC that  
16 their interest is protecting HSBC by this  
17 work?

18 A. By review of this, I would say  
19 that.

20 Q. And with regard to that, what  
21 benefit to the estate would that type of work  
22 have that the debtor should pay LeBouf for  
23 that work?

24 A. I would assume the benefit to the  
25 estate would be in having less ongoing

1 K. Kliever

2 professional fees as a result of additional  
3 review and documentation down the road, but I  
4 don't specifically know what the benefit to  
5 North Western would be as a result of those  
6 items.

7 Q. But it is your recollection that  
8 this was included in the fees that were paid  
9 to HSBC?

10 A. Yes, it is.

11 Q. Do you think it is reasonable for  
12 HSBC to expect payment by the debtor of such  
13 charges?

14 A. Yes, I do. I guess overall.  
15 Obviously, we paid the invoices, so yes, we  
16 were in agreement with those.

17 Q. Do you know if when HSBC submitted  
18 their invoices including LeBouf's and Pryor,  
19 Cashman, did anyone at Paul, Hastings review  
20 those invoices?

21 A. Yes, I believe they did. I don't  
22 know who specifically, but they were reviewed  
23 by Paul, Hastings personnel.

24 Q. How about Greenberg Traurig, did  
25 they review invoices?

1 K. Kliewer

2 A. I don't believe they would have  
3 reviewed invoices.

4 Q. Did you receive any reports from  
5 Paul, Hastings regarding invoices?

6 A. I did not receive any written  
7 reports. We did have telephone  
8 conversations.

9 Q. Mr. Kliewer, let me show you  
10 another document that was produced pursuant  
11 to our document request which was an invoice  
12 from Pryor, Cashman.

13 If you can take a second to look at  
14 it and tell me if you're familiar with it.

15 A. Yes, I am.

16 MR. SNELLINGS: Can we have this  
17 marked as Exhibit 4.

18 (Kliewer Exhibit 4, Pryor,  
19 Cashman Invoice, marked for  
20 identification, as of this date.)

21 Q. What we have marked here as Exhibit  
22 4 is an invoice from Pryor, Cashman, Sherman  
23 & Flynn, LLP, dated November 24, 2004. It's  
24 addressed to HSBC Bank USA.

25 Have you seen this document before?

1 K. Kliever

2 A. Yes, I have.

3 Q. Could you tell us at what occasion  
4 did you see this invoice?

5 A. This invoice was included in the  
6 invoices provided by HSBC requesting payment  
7 of their indenture trustee fees relating to  
8 the bankruptcy.

9 Q. Do you have any understanding that  
10 these, the total balance is \$643,364.33, was  
11 that part of the total fee payment to HSBC?

12 A. Yes, it was.

13 Q. And it is certainly the largest  
14 part?

15 A. The bulk of it. Attorneys.

16 Q. No debate.

17 And this was one of the documents  
18 you reviewed along with the other documents  
19 that we have already marked from HSBC?

20 A. Yes, I did.

21 Q. Did you have any discussions  
22 regarding this invoice with anyone else at  
23 the company?

24 A. Yes, again, it was part of the  
25 overall discussion of the HSBC fees with

1 K. Kliewer

2 Brian Bird and Gary Drook and counsel from  
3 Paul, Hastings.

4 Q. And with regard to the payment to  
5 HSBC, did all of these fees get paid through  
6 HSBC?

7 A. Yes, they did.

8 Q. Did North Western or you request  
9 from HSBC or Pryor, Cashman any further  
10 detail or backup with regard to this  
11 particular invoice?

12 A. No, we did not.

13 Q. Do you know if anyone from Paul,  
14 Hastings sought further backup or further  
15 detail from Pryor, Cashman?

16 A. I'm not aware that anyone from  
17 Paul, Hastings did.

18 Q. And consistent with your prior  
19 testimony, you did not have any conversations  
20 with HSBC about Pryor Cashman's fees as they  
21 were included in the HSBC request?

22 A. That's correct.

23 Q. And Pryor, Cashman has never filed  
24 a fee application with the bankruptcy court  
25 for these fees to be reviewed?

1 K. Kliever

2 A. That's correct.

3 Q. Do you recall when you received  
4 this particular invoice?

5 A. This was included in the other  
6 HSBC -- with the other HSBC invoices, and the  
7 company received it within the week prior to  
8 November 1.

9 Q. Just sort of looking at some of the  
10 items that is found on page 2 of this  
11 invoice, there is time entries, the fourth  
12 one down talking about a tri-party agreement.

13 Do you have any knowledge of what  
14 those terms mean in this context?

15 A. No, I'm not aware -- I don't know  
16 what that is referencing.

17 Q. Was this with regard to the senior  
18 notes as we were discussing them before, the  
19 senior unsecured notes class 7; was HSBC  
20 always the indenture trustee throughout the  
21 bankruptcy?

22 A. I believe they were. We changed  
23 the indenture trustees at one point, but I  
24 don't recall exactly when. I believe HSBC  
25 was the indenture trustee throughout the term